

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

RICHARD HERRERA, #712197	§	
VS.	§	CIVIL ACTION NO. 6:14cv893
REBECCA WESTBROOK, ET AL.	§	

ORDER OF DISMISSAL

Plaintiff Richard Herrera, an inmate confined at the Michael Unit of the Texas prison system, proceeding *pro se* and *in forma pauperis*, filed the above-styled and numbered civil rights lawsuit pursuant to 42 U.S.C. § 1983. The complaint was directly assigned to United States Magistrate Judge John D. Love, who issued a Report and Recommendation concluding that the lawsuit should be dismissed. The Plaintiff has filed objections.

The Plaintiff alleges that the Defendants were deliberately indifferent to his health and safety. On March 31, 2015, Magistrate Judge Love conducted an evidentiary hearing, consistent with *Spears v. McCotter*, 766 F.2d 179, 182 (5th Cir. 1985), to give the Plaintiff the opportunity to fully discuss the factual basis of his claims. The Plaintiff complained that he has been bullied and neglected, but the facts as alleged during the hearing did not give rise to an inference of deliberate indifference as required by the Supreme Court in *Farmer v. Brennan*, 511 U.S. 825, 834 (5th Cir. 1994). In his objections, the Plaintiff goes no further than to make conclusory claims of recklessness and callous disregard. He has not shown that his constitutional rights were violated.

The Report of Magistrate Judge Love, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having

made a *de novo* review of the objections raised by the Plaintiff, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections by the Plaintiff are without merit. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

**ORDERED** that the Report and Recommendation (docket entry #27) is **ADOPTED**. It is further

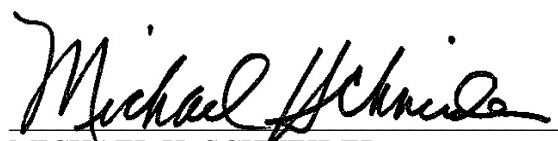
**ORDERED** that the Plaintiff's motion to voluntarily dismiss Lt. James Kelly from the lawsuit is **GRANTED** and the claims against him are **DISMISSED** without prejudice. Fed. R. Civ. P. 41(a)(1). It is further

**ORDERED** that the Plaintiff's claims against the remaining Defendants are **DISMISSED** with prejudice pursuant to 28 U.S.C. § 1915A(b)(1). It is finally

**ORDERED** that all motions not previously ruled on are **DENIED**.

**It is SO ORDERED.**

**SIGNED this 24th day of April, 2015.**

A handwritten signature in black ink, reading "Michael H. Schneider", written over a horizontal line.

MICHAEL H. SCHNEIDER  
UNITED STATES DISTRICT JUDGE